

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Oakland, California)

PALM HAVEN NURSING & REBAB LLC
d/b/a PALM HAVEN CARE CENTER

Employer

and

EDGAR ZELAYA,
Petitioner

Case 32-RD-1457

and

HEALTHCARE WORKERS' UNION, LOCAL 250,
SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO¹

Union

DECISION AND DIRECTION OF ELECTION

Palm Haven Nursing & Rehab, LLC d/b/a Palm Haven Care Center, herein called the Employer operates a skilled nursing facility. Healthcare Workers' Union, Local 250, Service Employees International Union, AFL-CIO, herein called the Union, represents a collective-bargaining unit consisting of certain of the Employer's employees. Edgar Zelaya, herein called the Petitioner, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the collective bargaining representative of the employees in the collective-

¹ The name of the Union appears as corrected, based on the wording of its name on the signature page of the collective bargaining agreement in this case, as well as the wording of its name in other cases filed with the Region.

bargaining unit. A hearing officer of the Board conducted a hearing in this matter on June 7, 2004. The Employer and the Petitioner participated in the hearing. Although the Union was given due notice of the hearing, it did not appear at, or participate, in the hearing. I note that no party has raised any arguments or presented any evidence establishing that an election should not be held in this matter, and I have concluded that an election is warranted in this case. The evidence and reasons supporting my decision are set forth below.

THE FACTS

The Employer is a California limited liability corporation engaged in the operation of a skilled nursing facility in Manteca, California. The Employer began operating that facility on about August 1, 2003.² Since that time, the Employer has, in the course and conduct of its business operations, generated gross revenues in excess of \$3,500,000. Within that same period, the Employer has received Medi-Cal payments of over \$1,600,000 from the state of California.³

Prior to August 1, 2003, the Union and CCK Health were parties to a collective bargaining agreement that was effective by its terms from February 1, 2002 through April 1, 2004. When the Employer began operations on August 1, 2003, it recognized the Union and assumed the collective bargaining agreement then in effect between CCK Health and the Union. According to the Employer, three grievances have been filed by the Union pursuant to the collective bargaining agreement; however, each of them was dropped after

² Prior to August 1, 2003, the facility was owned and operated by CCK Health.

³ I take administrative notice that the Legislative Analyst's Office of the state of California, in its report on proposed spending for the 2002-2003 budget, stated that of the \$27 billion in Medi-Cal expenditures for that budget year, approximately \$15 billion would come from the federal government. (See http://www.lao.ca.gov/analysis_2002/health_ss/healthss_07_4260_anl02.htm#_Toc1355276. Based on the above referenced evidence, I conclude that the Employer meets the Board's jurisdictional standards for nursing homes and is an employer engaged in commerce. East Oakland Community Health Alliance, 218 NLRB 1270 (1975).

the Employer's initial denial of the grievances. There is also evidence that, in preparation for bargaining for a new collective bargaining agreement, the Union requested information from the Employer on a couple of occasions, and that the Employer provided the Union with the information. No bargaining sessions were held.⁴

As set forth in the collective bargaining agreement between the Employer and the Union, the Union is the collective bargaining representative of the following unit of the Employer's employees:

All full time and regular part time rehabilitation aides, housekeeping, laundry, maintenance, dietary, and nursing employees employed at the employer's at the Employer' skilled nursing facility located at 469 East North Street, Manteca, California; excluding department heads, assistant department heads, charge nurses. activity employees, office clerical employees, guards, watchmen, assistant supervisors, and supervisors as defined by the NLRA , as amended.⁵

ANALYSIS

It is well established that in a decertification election the bargaining unit in which the election is held must be coextensive with the certified or recognized unit. Campbell Soup Co., 111 NLRB 234 (1955); W.T. Grant Co., 179 NLRB 670 (1969); Bell & Howell Airline Service Co., 185 NLRB 67 (1970); Mo's West, 283 NLRB 130 (1987). Here the

⁴ The now expired collective bargaining agreement contains a grievance and arbitration procedure, dues deduction, and other relevant provisions regarding employee wages and benefits. Petitioner, an employee, testified that the Union had a steward for the night shift and used to have a steward n the day shift. The record also shows that at some point after the expiration of the collective bargaining agreement, an individual named Phillipe came to the Employer's facility and introduced himself to employees as being a representative of the Union. The shop steward distributed a flyer about a Union meeting that was to be held at a pizza parlor; however, the employees were subsequently informed that the meeting was cancelled due to the illness of the Union representative. I also take administrative notice that in prior Board cases, the Board has found the Union to be a labor organization: California Pacific Medical Center, 337 NLRB 910 (2002); Healthcare Workers Local 250, SEIU, 321 NLRB 382 (1996). Finally, the Union has asserted its labor organization status in other Region 32 representation cases; such as, Covenant Care, Inc., Case 32-RC-5032, filed in 2002. Under these circumstances I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. Mac Towing, Inc., 262 NLRB 1331 (1982).

⁵ The collective bargaining agreement unit description also refers the reader to Appendix "A" Classification/Wage Schedule that is attached to the collective bargaining agreement. There are about 75 employees in the unit.

unit in which the election is sought is co-extensive with the contractual/recognized unit.

As there are no other issues or reasons to preclude processing the petition in this case, I have decided to direct an election in this case.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time rehabilitation aides, housekeeping, laundry, maintenance, dietary, and nursing employees employed at the employer's at the Employer' skilled nursing facility located at 469 East North Street, Manteca, California; excluding department heads, assistant department heads, charge nurses, activity employees, office clerical employees, guards, watchmen, assistant supervisors, and supervisors as defined by the NLRA , as amended.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not

they wish to be represented for purposes of collective bargaining by the HEALTHCARE WORKERS' UNION, LOCAL 250, SERVICE EMPLOYEES INTERNATIONAL UNION. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have

access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-521, on or before **June 21, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. As the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential

voters for a minimum of 3 (three) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C.

20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **June 28, 2004**. The request may **not** be filed by facsimile.

Dated at Oakland California this 14th day of JUNE 2004.

/s/ Alan B. Reichard
Alan B. Reichard
Regional Director
National Labor Relations Board
Region 32

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